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MAG. JUDGE LEHRBURGER

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: Souther	n NY
Name (under which you were convicted): BABYREV VALIM		Docket or Case No.: 530280/08
Place of Confinement: KFPC (KIRBY FOR PSYChlatRie Center)	Prisoner No.:	#7022193
Petitioner (include the name under which you were convicted) BABYREV, VALIM v.	Respondent (authorized person h DR. BRIAN B ANN MARIET- Zommissione R	aving custody of positioner) ELFI, DIR ELKFPC SULLIVOUN, 2 OF OMPLO(NY)
The Attorney General of the State of:		

	PETITION
1.	(a) Name and location of court that entered the judgment of conviction you are challenging: Supreme Court of the State of New York County of New York 60 centre Street, New York, NY 10007 (the hearing took place at KFPC) (b) Criminal docket or case number (if you know): 530280/08 (ORIQ, idicfment)
2.	(a) Date of the judgment of conviction (if you know): 4 05 03 2017 64-98 county
	(b) Date of sentencing: ORiginal NGRI Plea was entered on 9/19/2001
3.	Length of sentence: Indefinite (or soid appears)
4.	In this case, were you convicted on more than one count or of more than one crime? Yes No
5.	Identify all crimes of which you were convicted and sentenced in this case: Following the WCKI plea
	(Not quilty by reasons Insanity), for the Charge of Murder in the Second degree, I was committed to the custody
	of the Commissioner of Mental Health of the State of NY (OMH)
	pursuant to NY CPL & 330.20. Every 2 years get
	a hearing to challenge my continued retention. I chal-
	Cenped my tast Refention Learing (May 3, 2017) in a habeaspet! +104.
6.	(a) What was your plea? (Check one)
	☐ (1) Not guilty ☐ (3) Nolo contendere (no contest)
	(2) Guilty (4) Insanity plea

you plead guilty to and what did you plead not guilty to?
(c) If you went to trial, what kind of trial did you have? (Check one)
□ Jury Judge only
Did you testify at a pretrial hearing, trial, or a post-trial hearing?
Yes
Did you appeal from the judgment of conviction?
X Yes No
If you did appeal, answer the following: Jasked (through counsel) for Rehear In and Review or the Benth trial deels (a) Name of court: Supreme Court of the State of NY, Country of
(a) Name of court: Europe in a court of the State of AN Court the
(b) Docket or case number (if you know): 520280/08
(c) Result: The Reheaping and Review Never trok Dia
(c) Result: The Reheaping and Review Never took pla (d) Date of result (if you know): Buring the hearing to Force me to tak more medicine Judge declared it me
(e) Citation to the case (if you know):
(f) Grounds raised: 2 am not mentally ! (.
(g) Did you seek further review by a higher state court? Yes No
If yes, answer the following:
(1) Name of court: Supreme Court of NY, County of (2) Docket or case number (if you know): 530280/08
(2) Docket or case number (if you know): $530280/08$

AO 241 (Rev. 09/17)
(4) Date of result (if you know): NOV. 14/18
(5) Citation to the case (if you know):
(6) Grounds raised: VIOLation of Doct NGRT Proceedings
(6) Grounds raised: VIolation of Post NGRI proceedings (Due process pights) & plearings man- dated by Stortute were Not provided
college Dy Stortute West NON provided
(h) Did you file a petition for certiorari in the United States Supreme Court? Yes A No
If yes, answer the following:
(1) Docket or case number (if you know):
(2) Result:
(3) Date of result (if you know):
(4) Citation to the case (if you know):
10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions
concerning this judgment of conviction in any state court? Yes No
11. If your answer to Question 10 was "Yes," give the following information:
(a) (1) Name of court: Appellate DIVISION 15t. Dept. (Supr. Cour
(2) Docket or case number (if you know): 530280/08
(3) Date of filing (if you know): On or about 12 [09] 18 £ (4) Nature of the proceeding: Appeal of my habeas pet 1+800 (5) Grounds raised: (1) JSC. (1) (1/2 n wan stated that
(4) Nature of the proceeding: Appeal of my habeas pet 1+60n (5) Grounds raised: (1) JSC. (1) ((1an wan stated that
(5) Grounds raised: (1) S.C. (((1an wan stated that
stal the reasons a complained of wax scheduled
It of take place on Jan. 09, 2018 and that
of of the place on Jan. 09, 2018 and that of I did not state the bosis For the relief
333 Plauested However, when that date
\$3 came about (1/09/19/) No hearing
took place and the fact is that o
vis was not provided with a hearty
Sign mandated by statute (CDL \$330.20(16))
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
□ Yes 🕅 No
(7) Result:

(8) Date of result (if you know):
(b) If you filed any second petition, application, or motion, give the same information:
(1) Name of court: Appellate DIVISION 1St. Dept.
(2) Docket or case number (if you know): $530280/08$
(3) Date of filing (if you know): On or about Nov. 5, 2019
(4) Nature of the proceeding: Proposed Amended pestson / Appellate
(4) Nature of the proceeding: Proposed Amended pestson Appellate (5) Grounds raised: Inaffective Assistance of counse;
Violations of Due process Rights;
CP1833020 is Unconstitutionally vague in the
It Does not consider inability of mentally ill
to track or confest the actions of state provided
Attorneys; Volations of my constitutiona
Rights With In the Confirma institution
Violations of the Conditions of confinement.
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
☐ Yes 💆 No
(7) Result:
(8) Date of result (if you know):
(e) If you filed any third petition, application, or motion, give the same information:
(1) Name of court:
(2) Docket or case number (if you know):
(3) Date of filing (if you know):
(4) Nature of the proceeding:
(5) Grounds raised:

AO 241 (Rev. 09/17)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
☐ Yes 💆 No
(7) Result:
(8) Date of result (if you know):
(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application,
or motion?
(1) First petition:
(2) Second petition:
(3) Third petition: Yes No
(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: I wot a lawyer, I was denied court appointed
appellate counsel even though poor person status was granted
12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.
CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
GROUND ONE: Inaffective Assistance of Counsel
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(1) last time & spoke to a lawyer was 6 months ago. The assigned
(1) last time I spoke to a lawyer was 6 months ago. The assigned counsel Glenn Hardy, does not omswer calls open a Rs. 2) He did not File the appeal of the last Benchtrial decision to
2) He did not File the appeal of the jast Bencht Fial decision to
Retainme, even though I repeatedly asked him to do so.
3) The previous Attorney, Don Graham adjourned my appear
Rehearing & Review and agreed to unreasonable adjourn-
(15) If for distinct extransity our state remedies on Ground Que, explains what
ments by apposing counse, until the issues to be Reviewed became most. He total me he does not trove to help
me with my habeas perstion because I filed it on myown
(4) After the previous year's hearing (2016), I made a similar
Request for a Reheasing and review with jury After films
It and unnesessorsly stalling the process Don & Raham
withdrew the petition he filed for me without my
Knowledge.

(c)	Direct Appeal of Ground One:				
	(1) If you appealed from the judgment of conviction, did you raise this issue?	Ź	Yes	W	No
	(2) If you did not raise this issue in your direct appeal, explain why:	ЭU	nse)	l, E	25
	(2) If you did not raise this issue in your direct appeal, explain why: My Could tomes I ke quested coppeal, wo	rs	801	na	Hoc-
	tive that the appeal-Rehearing	\$1	2001	en	1 WHA
(d) Pos	tive that the appeal-Rehearing t-Conviction Proceedings: Jury, never took place 18 years of es	the	rong	200	it my
	(1) Did you raise this issue through a post-conviction motion or petition for habeas co	orpus	in a state	e trial	court?
	Yes 🗆 No				
	(2) If your answer to Question (d)(1) is "Yes," state:				
	Type of motion or petition: Appeal and proposed an	rev	ded	pe	diffon
	Name and location of the court where the motion or petition was filed: Hay Appella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion or petition was filed: The pella Le Division 1st. Pept Suprementation of the court where the motion of the court where t	ne N	Coc Loc	201 212	epuswelt. 10010
	Date of the court's decision: Stoll penetma				·····
	Result (attach a copy of the court's opinion or order, if available): Attache	a	159	Ca	py oforder
	Granting pour pengon's Relief but demy	my	APP	zeil	ate
	Counsel (to be appointed by the count)				
	(3) Did you receive a hearing on your motion or petition?	_	Yes		No
	(4) Did you appeal from the denial of your motion or petition?	<i>-</i>	Yes	见	No
	(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?		Yes	Ø.	No
	(6) If your answer to Question (d)(4) is "Yes," state:				
	Name and location of the court where the appeal was filed:				
	Docket or case number (if you know):				
	Date of the court's decision:				
	Result (attach a copy of the court's opinion or order, if available):				
			•		
	(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did ADDEALO & SS MAD BS DECLE &				W77
	Appealed as hogh as I could on	 	20	egu C	tar
<i>-</i>	to westing usensus (pen). State,	D72	OVI	de	& very
	Consted Ime to use a pen at k	- F	PX	a	one
	popol in use of pen was helles Ronte	ایکرا	sed-	los.	Smonthy
	pent ing use of pen was fully Roste Legal papers come in with resistance	e fi	evn S	+APP	Page 7 of 16

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have
used to exhaust your state remedies on Ground One: I complained to the Lag tree
Censer for Deople With Special needs of the State of NX
that I am not represented in asturitarionly on porces
GROUND TWO: Volations of my 5th and 14th amendment
Due process Rights, a pattern of (Repeated)
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Duesnip all 5 years of my confinement at
KFRE I was not provided with a Releasing
and Review with Jury, eventhough I asked Ineques
ted one every year (see addached List of Actions, Extens
For the Case Tudex No. 530880/08/, When I questioned
my Addonneys actions Montal Hygrene legal Jerette
FOR assignment of independent (legal aid) Court a prosing the onder top assignment of independent (legal aid) Court a prosing coursel with from J.S. E. John J. Kelley top from J.S. E. John J. Kelley not Represented at all. (NOV. 28, 2018). New attorney,
For assignment of independent (legal aid) Court a protofed coursel
-th) Afron did not exhaust your state-remedies an around law, explain why: At the the Porto A Law
not Represented at all. (NOV. 28, 2018). New attorney,
Gem rugery, coef to stay out the states, ase, not restain
mandaled hearings are not provided. No one eares.
(c) Direct Appeal of Ground Two: Glenn Mandy Attempted to withdraw pett- from From R&R just line Don Grahow. (before It becan moot
(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No No
· ·
(2) If you did <u>not</u> raise this issue in your direct appeal, explain why: My Countel at all times when I requested apeal, was so maffective that the appeal perfect protections of severe when where
that the appeal preneciping growier w/ firey werek
Took plavee.
(d) Post-Conviction Proceedings:
(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
Yes 🗆 No
(2) If your answer to Question (d)(1) is "Yes," state:
Type of motion or petition: Appeal and proposed amended Rest- Name and location of the court where the motion or petition was filed: I ton For with blinchers C. Oppella fe Division of NYS Supreme Court, 1St Dept., 27 March 800 Ave, New YORK, NY
Name and location of the court where the motion or petition was filed: For with Thablas C.
LET DO OF 27 DO OFFICE AND MOUNTARY AND
Docket or case number (if you know): $530280/02$
() () () () () () () () () () () () () (

Result (attach a copy of the court's opinion or order, if available): Warther Sample	Result (attach a copy of the court's opinion or order, if available): Affactice		S. A.	E0]-	7 2	7—
(3) Did you receive a hearing on your motion or petition? (4) Did you appeal from the denial of your motion or petition? (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? (6) If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Appearled set in gla as Secret an may are my without to appearled set in gla as Secret an may are my without to appearled set in gla as Secret an may are my without to appear and the transfer of the court's the glass of t	Appettate courself to be a promised	64	ued.	ה משלים ממספים	u) Ro	12
(4) Did you appeal from the denial of your motion or petition? (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? (6) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Name and location of the court where the appeal was filed: Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: 3. appearled as high as 3 covered on any awa, without Equipment of any away, without Equipment of any away, without Equipment of a warring at the State of t						
(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes & No (6) If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Japea (as as in gla as Second on my own, without courts of the court's opinion or order, if available): (8) Appeal as as in gla as Second on my own, without court courts of and without Repulsar access to we is the court of the court's the court's opinion or order, if available): Outer Appeal as the first publication of any own, without the court of the co				, ,		
(6) If your answer to Question (d)(4) is "Yes," state: Name and location of the court where the appeal was filed: Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I appealed as lingth as I could on any own without courts of the state of the stat	•		Yes	Ø	No	
Name and location of the court where the appeal was filed: Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: A appealed as high as S could on any awn, who we to constitute the state of the court without Regular artists to was singly after the state of the court of the cour	(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?		Yes	又	No	
Docket or case number (if you know): Date of the court's decision: Result (attach a copy of the court's opinion or order, if available): (1) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I appealed as high as I could on my own, wishout town they have a crest to we is my left and to the thought a crest to we is my left and the court town the popular acrest to we is my left and the court and the plant of a crest to we is my left and the english who have been at the tell in the papers are after not allowed it of the court of	(6) If your answer to Question (d)(4) is "Yes," state:					
Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: 3 appeared as high as I could an any own without course and without regular access to writing lifenshes feen). State plevilles yery limited divined of use a pen at KFFC by insistantly employing hours end in the you have the medies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Center For People with Special needs theed to NYS Justice center For People with Special needs the of not peoples with Special needs the for not peoples with special needs the form of peoples with Special needs the form of the same Justice and the special activity of the confinence of mylegal activity of the four flad keeps me in early increase, elected the flad the flad the people with special flat the specific facts that support your claim.) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.) She dust class not consider the actions of Stope provided of the place of a pointed law of the provided of the people actions of the provided of the provided of the place of the pointed law of the provided of the place of the pointed law of the provided of the place of the provided of the place of the pointed law of the provided of the place of the place of the place of the provided of the place of the	Name and location of the court where the appeal was filed:	·				
Result (attach a copy of the court's opinion or order, if available): (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: 3 appearled as high as I could on my own, without rounted are is to writing lefens that feel). Stafe plovides yet Rey invited dinnet for use a pen as tell by invisionally employed penses are after non-sense ical institutional Rules of penses. Legal papers are after non-sense ical institutional Rules of penses. Legal papers are after non-sense ical institutional Rules of penses corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Center for People with Special needs these of NVS Further actions of the Special needs the sense of mylegal activity through unreasonably limistry fresh impedence of mylegal activity through unreasonably limistry fresh in in war a pen ROUND THREE: The law flad keeps me in confinement, chisses is a pen ROUND THREE: The law flad keeps me in confinement, chisses. Supporting facts (Do not argue or cite law, Just state the specific facts that support your claim): Le statute for contest the actions of Stofe provided of the stack or contest the actions of Stofe provided of the stack or contest the actions of Stofe provided of the stack or contest the actions of Stofe provided of the stack or contest the actions of Stofe provided of the stack or contest of any knowledge or knowling contests they had a contest or any knowledge or knowling contests of the first provided or first actions of the provided or first actions are first actions.	Docket or case number (if you know):					
(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: 3 appearled as high as I could on my own, without coursel and without Regular access to we it was lifened from the followed of the plantife of plantife of the plantife of plantife on Ground Two: I complained to NYS Justice center for People with Special needs theat I must be presented (not in actuality only on paper). I complain the factorial of the Same Justice of mylegal activity through uneasonably limiting the time to use a pen round Three: The law flast reeps me in confinement, colleges of supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): 2 sha fuck class hod consider the mass of stope provided differences. Shale apointed lawyers in my ease, or try my behalf civiloud my knowledge of knows or ease, or try my behalf civiloud my knowledge of knows or ease.	Date of the court's decision:					
(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Sappealed as high as I could an my own, without recurred and without Regular access to we it was a lefensels feen). State provides very finited since to use apen at KFPC by his stanting enforcing honselve ical institutional Rules of penuse logal papers are after not ollowed it other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: I complained to NYS Justice center for People with Special needs theat I must represented (not in actuality and you paper). I complain the fact Same Justice after the form to use a pen integral activity through unreasonably limiting the time to use a pen around THREE: The law that keeps me in confinement, collected of supporting facts (Do not argue or cite law, Just state the specific facts that support your claim.): Le standard close hod consider the machiner of the national of the support your claim.): Le standard close that a contest the actions of Stope provided differences. Shale apointed lawyers in my ease, or try my behalf civilional my knowledge or knows my course of the standard actions of the standard contest the actions and the second and the standard actions and the standard actions of the standard actions of the second actions of the standard actions and the standard actions as a standard actions and the standard actions and the standard actions and the standard actions and the standard actions are actions.	Result (attach a copy of the court's opinion or order, if available):					
I appealed as high as I could on my awn, who we count to wind and without Regular access to writing lifensfly fpen). State plovides ye ry firm ted drine to use apen as KFPC by insistantly emforcing nonsensical institutional Rules of penuse Logal papers are offer not alwaed in the whomas Rules of penuse Logal papers are offer not alwaed in the west to extensive remedies, etc.) that you have used to exhaust your state remedies on Ground Two: I complained to NVS Justice center for People with special needs that I not pepresented foot in actuality only on paper. I complabe to the same Justice about states impedence of mylegal activity through unpeasonably limiting the time to use a pen ROUND THREE: The law that keeps me in confinement, collected to the surface of supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Les duck Loes not consider the mability of mental of the free of provided the place of state apointed lawyers in my ease, are transiting contents of the actions of states are not appeared to the penals of civiliant only knowledge or knowing contents of the penals of civiliant of the penals of contents of the penals of civiliant of the penals of contents of the penals of civiliant of the penals o						
Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Le Staduk Loes not consider the mability of mentally of the factions of stofe provided to the provided the actions of stofe provided the provided in my ease, artical and provided considered and the provided provided considered the provided provided provided the provided provid	I appealed as high as I could on my or counsel and without Regular acres. Usenstes (pen). State provides very a to use apen as KFPC by insistantly enforce	VI S L M	ow,	orio CH Se USE	pri USI	e ca(
Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Le Stadute Loes not consider the mability of mentally (fo track or confest the actions of stope provided HORneys. State appointed lawyers, in my case, action in my behalf coilloud my knowledge or knowing conse b Heir actions and floose action, were aganist	I appearled as high as I could on my or counsel and without Regular acres. When she pends years were sufficiently to use apen at KFPC by Mesostantly enforced institutional Rules of penuse. Logal papers are other Remedies: Describe any other procedures (such as habeas corpus, administration have used to exhaust your state remedies on Ground Two: I complained center for People with special needs fepresented (not in actuality and your state's mylegal activity through unpeasonably limiting the mylegal activity through unpeasonably limiting the	who the start of t	ow, ow, ow, ow, ow, or he is the indices, or he can be de	est of out of the service of out of out of out of out of out of the service of the s	Now I feel of	called it
Le stadute Loes not consider the mability of mentalle (to track or confest the actions of state provided HORneys. State apointed lawyers, in my case, or tery in my behalf without my knowledge or knowing conse. Is their actions and those action, were against	Dappearled as lingh as I could on my or counsel and without Regular acres. Cifensels (pen). State provides very land for use apen as kflc by insistantly enforce institutional Rules of penuss. Logal papers are not be remedies: Describe any other procedures (such as habeas corpus, administration have used to exhaust your state remedies on Ground Two: I complained center for People with special neck fepresented (not in achialist, and your state's perfect the confined for the Same Sustitute Censer about state's implegal activity through unpeasonably limiting the ROUND THREE: The Low that keeps me in confine	who the start of t	ow, ow, ow, ow, ow, or he is the indices, or he can be de	est of out of the service of out of out of out of out of out of the service of the s	Now I feel of	called it
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Horneys. State apointed lawyers, in my ease, we ten in my behalf without my knowledge or knowing course. Is their actions and flose action, were against	Dappealed as high as I could on my or counsel and without Regular actes. Cifensils (pen). State provides very a fouse apen at KFPC by insistantly enforce pushibitional Rules of penuse Logal papers are not be used to exhaust your state remedies on Ground Two: I complaine center for People with specific neck pepresented (not in actuality, and your state's mylegal activity through unpeasonably limiting the ROUND THREE: The Low that keeps me in confine supporting facts (Do not argue or cite law. Just state the specific facts that support your clair	ing coffice of the second of t	elennedies, or treese ex for	est of out of other services of out o	Desillowing you gress to the contract of a f	ca(edit
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(c)	Direct Appeal of Ground Three:			<u> </u>	
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	(2) If you did not raise this issue in your direct appeal, explain why: //// Ce	200	nse	car	al
<	Ames when I requested appeal, wa				
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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did oppealed as high as a eocile on me Counsel and in through Regular at lefensits (pen). State provides very fresent) Ame to use a pen at KFPC Cuforerry ponsensical profitational	10 ee 10	eva sf A sm	widhe swell kallin	scef-
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(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrati				
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and affectals at KFPC with no re	su	e Coss,		

	e answer these additional questions about the petition you are filing:
(a)	Have all grounds for relief that you have raised in this petition been presented to the highest state court
	having jurisdiction? 🗇 Yes 🙀 No
	If your answer is "No," state which grounds have not been so presented and give your reason(s) for not
	presenting them: I could not Appear hypher thoin Appellat D, vision 18+ ppt. because: (1) the Appear 15 th pendomy 121 Jan not represented
	and In not a lawyer; (3) Institution contining
(b)	peal 15 the pending (2) I am not represented and Immod a lawyer; (3) Institution confining me prevents me from we stry legal papers By restricting my use of a per; not giving time to write Is there any ground in this petition that has not been presented in some state or federal court? If so, which
	ground or grounds have not been presented, and state your reasons for not presenting them:
Have	you previously filed any type of petition, application, or motion in a federal court regarding the conviction
	you challenge in this petition? \(\sigma\) Yes \(\sigma\) No
	- ,
	es," state the name and location of the court, the docket or case number, the type of proceeding, the issues
	d, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy
of any	y court opinion or order, if available. Unsteel States Dojtket Court, outlern DISTRICT OF NX; BABYREVV. Garotte, 16 CV-
-51	421 SDNV. 2018; at hacked is the opinion of S. D.J. Edgardo Ramos 42U.SC. \$1983 CNR
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De	ens are not allowed Violations of Due process
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	ou have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for
	dgment you are challenging? □ Yes Ø-No
աշ լա	, , , , , , , , , , , , , , , , , , , ,
v	s " state the name and location of the court, the docket or case number, the type of proceeding, and the issues
If "Ye	es," state the name and location of the court, the docket or case number, the type of proceeding, and the issues
v	

16.	Give the name and address, if you know, of each attorney who represented you in the following stages of the						
	judgment you are challenging:						
	(a) At preliminary hearing: Vineand Coman gmo						
	(b) At arraignment and plea: Mary Beth Fertek						
	(c) At trial: Don Graham						
	(d) At sentencing: Glenn Herzely						
	(e) On appeal:						
	(f) In any post-conviction proceeding:						
	(g) On appeal from any ruling against you in a post-conviction proceeding:						
17.	Do you have any future sentence to serve after you complete the sentence for the judgment that you are						
	challenging? Yes No						
	(a) If so, give name and location of court that imposed the other sentence you will serve in the future:						
	(b) Give the date the other sentence was imposed:						
	(c) Give the length of the other sentence:						
	(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the						
	future?						
18.	TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain						
	why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*						
	(A) as Sunderstand 17, the May 3, 2017 Reten- tron order did not be come from but the						
	time to seek appeal or Rehearing & Review W/ jury expired. The application for rehearing and review was declared most in 2019,						
	and Review was declared most in 2019,						

AO 241 (Rev. 09/17) his method of tollno gives me until In Ledepal Court DeHHon from the Ame the State-Due tear Minediment K Removee een Removed and well lepa a state provided ten not with concern my Cafes to menta the tene Cou kness as to what goes on with my made Request for medical and Court Ro-

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

eards in 2017-2019 they were all denled

- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

^{*} The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

AO 241 (Rev. 09/17) (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection. Therefore, petitioner asks that the Court grant the following relief () Release me from
eusfocky of Office of Merital Health; Alterforatively,
Transfer me to Non-secure factity; Alt. Withdraw NGRI
or any other relief to which petitioner may be entitled.

Plea. or any other relief to which petitioner may be entitled. Signature of Attorney (if any) I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on (month, date, year). Executed (signed) on $\frac{12}{13}\frac{19}{19}$ Bobyrev Nadm Signature of Petitioner If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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Exhibit A

- A(1) Order of J.S. E., Hon. Cillian wan, Lenying the original Habeas Petition to the Supreme Court,
 NY County.
- A(2) Order of the Appellate Division 1st. Dept., granting motion for poor penson's pelvef, but denying appointment of Appellate Counsel; leave to proscerute the Appeal-Granted.
- A(3) listofactions on my post NGRI proceedings (cpl 330.20) Index # 530280/2008 (530280-08)
- A(4) Affirmation in Response to Motion to Proceed as a poor person; (by Oren L. Zeve)
- A(5) E-mail to Elenn Handy, attorney assigned to my Ease, in which I asked him if he fled an appeal of the Bench teral decision for my Retention (the most recent retention order).

Case 1:19-cv-11693-LTS Document 1 Filed 12/20/19 Pag

Case 1:19-cv-11693-LTS Document 1 Filed 12/20/19 Page 18 of 25

Present - Hon. Rolando T. Acosta,
Judith J. Gische
Barbara R. Kapnick
Ellen Gesmer
Anil C. Singh,

Presiding Justice,

Justices.

In the Matter of Vadim Babyrev, a Patient at Kirby Forensic Psychiatric Center,

Petitioner-Appellant,

For a Writ of Habeas Corpus Pursuant M-6532 to Article 70 of the Civil Practice Law Index No. 530280/08 and Rules,

-against-

Commissioner of Mental Health, et al.,

Respondent-Respondent.

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal taken from the order of the Supreme Court, New York County, entered on or about November 14, 2018, and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon, it is

Ordered that the motion for poor person relief is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and files an original, five hard copies and, if represented by counsel, one digital copy of such brief, together with the original record, pursuant to Section 1250.9 of the Practice Rules of the Appellate Division. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record. The motion, to the extent it seeks the assignment of appellate counsel, is denied.

ENTERED: May 30, 2019

CLERK

Case 1:19-cv-11693-LTS Document 1 Filed 12/20/19 Page 19/01/25 7 (3)

New York County Clerk's Office ***** VS. ***** **** 1/1/2008 18 Actions NF NOTE OF ISSUE 企圖 11/3/2017 ORDER SECOND RETENTION 企圖 5/15/2017 ORDER TO SHOW CAUSE FOR REHEARING AND REVIEW WITH JURY 企圖 2/27/2017 NF JURY DEMAND 12/7/2016 NOTE OF ISSUE 12/7/2016 ORDER FOR REHEARING AND REVIEW WITH JURY AND ORDER TO PRODUCE 9/27/2016 ORDER APPOINTING PSYCHOLOGIST AND ORDER FOR MEDICAL RECORDS 8/12/2016 FIRST RETENTION ORDER 6/16/2016 企圖 ORDER TO SHOW CAUSE 企圖 4/5/2016 **FINAL ORDER** / 国 4/5/2016 JURY DEMAND NF 11/4/2015 NOTE OF ISSUE NF 11/4/2015 5 ORDER TO SHOW CAUSE FOR A REHEARING 企圖 9/11/2015 ORDER SHORT FORM ORDER PART 58 SIGNED 9/9/15 APPLICATION FOR JURY TRIAL 企圖 9/11/2015 ORDER FINAL ORDER AUTHORIZING THE INVOLUNTARY TREATMENT 企圖 9/11/2015 ORDER APPLICATION FOR A REVIEW AND REHEARING GRANTING RETENTION 企圖 9/11/2015 ORDER TO SHOW CAUSE 企图 3/12/2015

ORDER FINAL

企圖 3/12/2015

Case 1:19-cv-11693-LTS Document 1 Filed 12/20/19 Page 20 of 25

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION - FIRST DEPARTMENT

In the Matter of

VADIM BABYREV, a Patient at Kirby Forensic Psychiatric Center,

Index No. 530280/08 Supreme Court N.Y. County

Petitioner-Appellant,

v.

AFFIRMATION IN RESPONSE TO MOTION TO PROCEED AS A POOR PERSON PURSUANT TO C.P.L.R. 1101

COMMISSIONER OF MENTAL HEALTH, &c, et al.,

Respondent-Respondent,

For a Writ of Habeas Corpus Pursuant to Article 70 of the Civil Practice Law & Rules.

Oren L. Zeve, an attorney admitted to practice in this State, affirms on penalty of perjury:

- 1. I am an Assistant Solicitor General in the New York State Office of the Attorney General, counsel for respondents Commissioner of Mental Health and the director of the Kirby Forensic Psychiatric Center (together, "OMH"). I submit this affirmation in response to petitioner-appellant's motion for permission to proceed as a poor person under C.P.L.R. 1101.
- 2. I make this affirmation based on my review of this Office's files, conversations with other attorneys in this Office, and information and belief.

Background

- 3. On May 14, 1999, Vadim Babyrev bludgeoned his mother to death with a clothes iron. On April 25, 2001, he was found not responsible by reason of mental disease or defect.
- 4. Since that time, Babyrev has been retained in OMH facilities pursuant to Criminal Procedure Law § 330.20. He currently is retained at Kirby Forensic Psychiatric Center.
- 5. Supreme Court issued a retention order in 2016, and Babyrev, represented by Mental Hygiene Legal Services (MHLS), filed a notice requesting rehearing and review. See C.P.L. § 330.20. Proceedings on the request were adjourned at the request of MHLS. Ultimately, that notice was withdrawn in light of the requirement that OMH file a new retention petition.
- 6. After OMH filed a new petition, Supreme Court, New York County (Mendez, J.), signed a two-year retention order, which is set to expire on or about January 27, 2019.
- 7. Babyrev again filed a timely notice for a jury rehearing and review.

 On November 3, 2017, MHLS filed a note of issue, but since that time MHLS has requested at each appearance that the court adjourn the proceeding. At an October 31, 2018 appearance, MHLS requested that the court adjourn the proceedings once again until January 9, 2019.

The Present Habeas Petition

- 8. While the proceedings on the 2017 retention order and request for rehearing and review were pending, on or about November 14, 2018, petitioner, proceeding pro se, filed a petition for a writ of habeas corpus. He alleged that he was being held unlawfully because he had not received his jury rehearing and review of either the 2016 or 2017 retention orders, in violation of C.P.L. § 330.20. Petitioner also alleged that he was no longer mentally ill, and the psychiatric examinations at OMH were rigged.
- 9. Petitioner sought to commence the proceeding by an order to show cause, but on November 14, 2018, Supreme Court, New York County (Wan, J.) denied the proposed order, stating that a jury rehearing and review was scheduled for January 9, 2019.
- 10. Although January 9 was the next control date in the proceedings, no rehearing and review was scheduled to proceed that day.

MHLS Withdraws as Counsel and New Counsel Is Appointed

11. Approximately one week after Babyrev filed his habeas petition, MHLS moved to withdraw as counsel on the 2017. MHLS asserted an irrevocable breakdown in the attorney-client relationship, which arose sometime after the request for rehearing and review. Supreme Court, New York County (Kelley, A.J.) granted the motion on November 28, 2018 and directed that new counsel should be appointed. See generally C.P.L.R. 321(b); Judiciary Law § 35.

- 12. The court has appointed new counsel for petitioner: Glenn Hardy,1619 3rd Ave., Ste. 9K; New York, NY 10128.
- 13. In anticipation of the January 9, 2019 proceedings, the District Attorney's Office, OMH, and Babyrev's new counsel agreed to adjourn the proceedings one month because Babyrev's counsel was at trial and could not appear.

The Present Appeal

- 14. Babyrev appealed from Supreme Court's refusal to sign the order to show cause accompanying his petition for a writ of habeas corpus. See C.P.L.R. 7011.
- 15. Babyrev now seeks permission to proceed as a poor person and for assignment of counsel.
- 16. A party moving for permission to proceed as a poor person must provide "sufficient facts so that the merit of the contentions can be ascertained" and demonstrate "that he or she is unable to pay the costs, fees and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal." C.P.L.R. 1101(a).
- 17. OMH takes no position on Babyrev's motion to proceed underC.P.L.R. 1101 other than to emphasize the following:

- (1) with respect to the merits of the contentions in the petition that Babyrev has been denied the statutory protections of § 330.20, Babyrev's then-counsel MHLS repeatedly requested to adjourn the proceedings;
- (2) upon information and belief, unspecified disputes between Babyrev and his former counsel led to such delays, and such disputes and the filing of the present habeas petition led his former counsel, MHLS, to seek (and receive) permission to withdraw;
- (3) OMH likely will be filing a new petition for continued retention shortly, which would entail a new review of and determination whether it would be appropriate to retain Babyrev pursuant to C.P.L. § 330.20, and likely would render moot the 2017 retention order that Babyrev challenges.

Dated:

New York, New York January 16, 2019

Qren L. Zeve

Managing Assistant Solicitor General

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Sergey B. <sbabyrev@gmail.com>

Appeal of retention order S.J.C. Ruth Fineman

1 message

Sergey B. <sbabyrev@gmail.com> To: info@ghardyesq.com

Wed, Oct 30, 2019 at 9:46 PM

Hello sir,

I'm your client Mr. Babyrey, Vadim. You were appointed by judge John J. Kelley as my defense counsel after Mental Hygiene Legal Service was relieved from defending me. I asked you to appeal Judge Ruth Fineman's decision to retain me at Kirby Forensic Psychiatric Center shortly after the hearing where you represented me. You never got back to me with the results of the appeal. Nor have you ever confirmed if such an appeal was ever filed or not. You have not contacted me in any way during the past several months. I'm asking you to get in touch with me as soon as possible, and let me know what happened with the appeal that I asked you to file.

Thank you, Vadim Babyrev